

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAMES F. LINDSEY and DEPARTMENT OF THE AIR FORCE,  
HICKAM AIR FORCE BASE, Honolulu, HI

*Docket No. 00-598; Submitted on the Record;  
Issued May 16, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
MICHAEL E. GROOM

The issues are: (1) whether appellant has established that he has greater than a four percent permanent binaural hearing loss for which he received a schedule award; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for further review on the merits under 5 U.S.C. § 8128(a).

Appellant, a 59-year-old interior electrician, filed a claim for benefits on June 29, 1998, claiming that he sustained a hearing loss caused by factors of his employment and that he became aware that this injury was causally related to his employment on June 24, 1998.

By letters dated July 9, 1998, the Office referred appellant and a statement of accepted facts to Dr. Meredith K. Pang, a Board-certified otolaryngologist, for an audiologic and otologic evaluation of appellant.

In a report dated August 18, 1998, Dr. Pang noted findings on audiological evaluation based on an August 7, 1998 audiogram. At the frequencies of 500, 1,000, 2,000 and 3,000 hertz, the following thresholds were reported: right ear -- 10, 15, 40 and 70 decibels; left ear -- 15, 10, 15 and 65 decibels. Based on these findings, Dr. Pang concluded that appellant had a hearing loss of 13.1 percent in his right ear and a 1.9 percent loss in his left ear, which amounted to a 3.9 percent binaural hearing loss.

In a memorandum dated September 26, 1998, an Office medical adviser, relying on Dr. Pang's audiogram results and calculations, determined that appellant had a four percent permanent binaural hearing loss.

On October 23, 1998 the Office granted appellant a schedule award for a four percent permanent binaural hearing loss for the period from August 7 to October 1, 1998, for a total of eight weeks of compensation.

By letter dated November 10, 1998, appellant requested reconsideration. He submitted a copy of a June 24, 1998 medical report from an audiology clinic, which he had previously submitted, but did not submit any new medical evidence with his request.

By decision dated December 16, 1998, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

The Board finds that appellant has not established that he has greater than a four percent permanent binaural hearing loss, for which he received a schedule award

The schedule award provisions of the Federal Employees' Compensation Act provide for compensation to employees sustaining impairment from loss or loss of use of, specified members of the body.<sup>1</sup> The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter, which rests in the sound discretion of the Office.<sup>2</sup> For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all appellants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the Office as a standard for evaluation of scheduled losses and the Board has concurred in such adoption.<sup>3</sup>

Under the A.M.A., *Guides*, hearing loss is evaluated by determining decibel loss at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz. The losses at each frequency are added up and averaged and a "fence" of 25 decibels is deduced since, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech in everyday conditions.<sup>4</sup> Then the remaining amount is multiplied by 1.5 to arrive at the percentage loss of monaural loss. The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss. The lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to arrive at the amount of binaural hearing loss.<sup>5</sup>

In this case, the case was referred to an Office medical adviser to apply the Office's standardized procedures to the August 18, 1998 audiogram performed for Dr. Pang. According to the Office's standardized procedures, testing at frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed hearing losses of 10, 15, 40 and 70 respectively. These decibels, totaled to 135 and divided by 4, obtained an average hearing loss at those cycles of 33.15 decibels. The average of 33.15 decibels, when reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals 8.75 decibels, which when multiplied by the established factor of 1.5 computes a 13.1 percent hearing loss in the right ear. Testing for the left ear at the frequency

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> *Danniel C. Goings*, 37 ECAB 781, 783 (1986); *Richard Beggs*, 28 ECAB 387, 390-91 (1977).

<sup>3</sup> *See Luis Chapa, Jr.* 41 ECAB 159, 167 (1989).

<sup>4</sup> A.M.A., *Guides*, page 166 (3<sup>d</sup> ed. 1988).

<sup>5</sup> *Id.*; *see also Danniel C. Goings*, *supra* note 2.

levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibel losses of 15, 10, 15 and 65 respectively. These decibels amounted 105, which, when divided by 4, obtains an average hearing loss at those cycles of 26.25 decibels. The average of 26.25 decibels, reduced by 25 decibels (the first 25 decibels were discounted as discussed above) equals 1.25, which when multiplied by the established factor of 1.5 amounts to a 1.9 percent loss in the left ear. The Office medical adviser then multiplied the lesser loss of 1.9 percent in the left ear by 5, added this figure to the greater loss of 13.1 and divided the total by 6 to arrive at a 4 percent binaural hearing loss.

The Board notes that the Office medical adviser properly used the applicable standards of the A.M.A., *Guides*, to determine that appellant has a four percent total binaural hearing loss causally related to his federal employment. The Board therefore affirms the October 23, 1998 Office decision finding that appellant is entitled to a schedule award for no greater than a four percent permanent binaural hearing loss.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of his claim under 5 U.S.C. § 8128(a).

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law; by advancing a point of law or fact not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.<sup>6</sup> Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>7</sup> Evidence that repeats or duplicates evidence already in the record has no evidentiary value and does not constitute a basis for reopening a claim.<sup>8</sup>

In this case, appellant has not shown that the Office erroneously applied or interpreted a point of law; he has not advanced a point of law or fact not previously considered by the Office; and he has not submitted relevant and pertinent evidence not previously considered by the Office. Thus, his request did not contain any new and relevant medical evidence for the Office to review. Additionally, appellant's November 10, 1998 letter did not show the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Although appellant generally contended that he was entitled to a schedule award greater than the four percent award granted by the Office, he failed to submit relevant and pertinent new medical evidence in support of this contention. Therefore, the Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

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<sup>6</sup> 20 C.F.R. § 10.138(b)(1). *See generally* 5 U.S.C. § 8128(a).

<sup>7</sup> 20 C.F.R. § 10.138(b)(2).

<sup>8</sup> *Howard A. Williams*, 45 ECAB 853 (1994).

The December 16 and October 23, 1998 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC  
May 16, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Michael E. Groom  
Alternate Member